

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 04-0459

DIRECT TESTIMONY

OF

JOSEPH H. RAYBUCK

Submitted on Behalf

Of

CENTRAL ILLINOIS LIGHT COMPANY

d/b/a AmerenCILCO

January 25, 2005

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CENTRAL ILLINOIS LIGHT COMPANY

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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Joseph H. Raybuck. My business address is One Ameren Plaza,
1901 Chouteau Avenue, St. Louis, Missouri 63103

Q. By whom are you employed and in what capacity?

A. I am employed by Ameren Services Company (“Ameren Services”) as Managing
Associate General Counsel. Ameren Services is a part of the Ameren Corporation
 (“Ameren”) holding company system which was formed by the December 1997 merger
 of Union Electric Company, now doing business as AmerenUE, and CIPSCO
 Incorporated. Ameren Services is a service company which provides AmerenUE and
 Central Illinois Light Company, doing business as AmerenCILCO, and the other
 companies of the Ameren system with a variety of administrative, management, and
 support services, including legal and regulatory services.

21 My duties and responsibilities currently include the management and oversight of three
22 attorneys and one paralegal pertaining to regulatory matters at the state and federal level
23 affecting Ameren and its operating utility subsidiaries.

24 **Q. Please describe your educational background and work experience.**

25 A. I received my law degree from St. Louis University School of Law in 1983. From 1983
26 to 1985 I was employed by Kortenhof & Ely, a law firm in St. Louis engaged in
27 insurance defense litigation. In April of 1985 I began work for Union Electric Company
28 as an attorney. I have been employed there since that time. With the creation of Ameren
29 in December of 1997 I became an employee of Ameren Services. In September of 2002
30 I assumed the position of Managing Assistant General Counsel. In January of 2004 I
31 assumed my current position.

32 **Q. What is the purpose of your direct testimony in this docket?**

33 A. The purpose is to respond to the request of the Staff of the Illinois Commerce
34 Commission (“Staff”) to explain the changes to the Services and Facilities Agreement
35 (“S&F Agreement”) that AmerenCILCO made and filed with the Illinois Commerce
36 Commission (“ICC”) on October 10, 2003 in ICC Docket Nos. 02-0140 & 02-0153
37 (consolidated). In doing so, I will compare the October 10, 2003 version to the proposed
38 version filed with the ICC by Central Illinois Light Company (“CILCO”) on February
39 13, 2002 prior to its acquisition by Ameren. The October 10, 2003 version is attached as
40 AmerenCILCO Exhibit No. 1.1 and shows the changes made in blackline.

41 I note parenthetically that the October 10, 2003 version of the S&F Agreement is no
42 longer in effect. In response to Staff's concerns stated in its Report dated June 14, 2004,
43 AmerenCILCO corrected the October 10, 2003 version so as to restore the original
44 version based on Staff's concerns. The corrected version of the S&F Agreement was
45 executed on June 29, 2004. It is now the current version in effect and is attached hereto
46 as AmerenCILCO Exhibit No. 1.2. The June 29, 2004, version was provided to the
47 Commission in support of AmerenCILCO's Motion to Dismiss previously filed in this
48 docket.

49 With this background, I understand the Staff is concerned that the changes as set forth in
50 the October 10, 2003 version may not have resulted in an agreement that was
51 substantially identical to the version previously approved by the ICC. I was involved in
52 making those changes and can therefore respond to the Staff's request. In my opinion,
53 the changes that AmerenCILCO made and filed on October 10, 2003 were permitted by
54 the ICC. Also, I believe that the changes were not material and thus resulted in an
55 agreement that was substantially identical to the one previously approved by the ICC.
56 However, in response to Staff's concerns AmerenCILCO eliminated the changes
57 objected to by Staff in its Report concerning the October 10, 2003 version.

58 **II. BACKGROUND: DESCRIPTION OF THE SERVICES AND FACILITIES**
59 **AGREEMENT AS APPROVED BEFORE THE AMEREN ACQUISITION**

60
61 **Q. Please discuss the origin of the Services and Facilities Agreement.**

62
63 A. CILCO filed this Agreement as an attachment to a Notice of its intent to transfer its
64 generating facilities to an affiliate. In particular, CILCO filed the S&F Agreement on

65 February 13, 2002 as Appendix B to the Notice of Transfer of Generation Assets
66 (“Notice”). The ICC later approved this transfer by an order issued in April of 2002.
67 All of this occurred prior to Ameren’s acquisition of CILCORP Inc. (“CILCORP”) and
68 its principal subsidiary CILCO. Prior to the acquisition, The AES Corporation (“AES”)
69 owned CILCORP.

70 **Q. What was the scope of the S&F Agreement?**

71 A. As described in CILCO’s Notice of Transfer, the S&F Agreement would allow for
72 CILCO and its affiliates “to provide each other with the necessary or desired services
73 and facilities at a price equal to the cost of such services and facilities”. (p. 8)

74 **Q. Who were the parties to the Agreement?**

75 A. Per the version attached as Appendix B to the Notice, the parties consisted of the
76 following corporate entities: AES, CILCORP, CILCO, Central Illinois Generation, Inc.
77 (“CIGI”), CILCORP Investment Management Inc., CILCORP Ventures Inc., CILCORP
78 Energy Services Inc., and QST Enterprises Inc. These entities are listed in Exhibit A to
79 the S&F Agreement on p. A-1.

80 **Q. Did the ICC approve CILCO’s proposal to transfer generating units to an affiliate?**

81 A. Yes. As indicated above, the Commission approved the Notice of Transfer on April 10,
82 2002, in consolidated Docket Nos. 02-0140 & 02-0153.

83 **Q. Did the Order of April 10, 2002 address the S&F Agreement?**

84 A. Yes. At page 7, the Order described the Agreement as follows: “AES, CILCORP,
85 CILCO and CIGI, CILCORP Investment Management Inc., CILCORP Ventures Inc.,

86 CILCORP Energy Services, Inc. and QST Enterprises Inc. will enter into a Services and
87 Facilities Agreement (“S&FA”) that is substantially identical to Appendix B to the
88 Notice”. Later on page 17 the Order concluded that CILCO should file with the ICC a
89 copy of the executed Agreement, and at the same provide a copy to the Manager of the
90 ICC’s Accounting Department.

91 **Q. Did the Order of April 10, 2002, impose any similar restrictions on any other**
92 **agreement referenced in the Notice?**

93 A. Yes. The Order approved a power supply agreement between CILCO and CIGI
94 “containing substantially the same terms as the form of contract identified as Appendix
95 C” to the Notice and ordered CILCO to file the contract with the ICC and to send a copy
96 to the Manager of Accounting. (p. 17) CILCO was required to file the power supply
97 agreement no later than 10 days after approval by the Federal Energy Regulatory
98 Commission (“FERC”).

99 **III. THE EFFECT OF THE ACQUISITION OF CILCORP AND CILCO BY**
100 **AMEREN**

101
102 **Q. When did Ameren complete its acquisition of CILCORP?**

103
104 A. On January 31, 2003.

105 **Q. Was the S&F Agreement the subject of any other regulator approvals**
106 **needed for the completion of the CILCO acquisition by Ameren?**

107 A. Yes. Since Ameren is a registered public utility holding company, it required the
108 approval of the Securities and Exchange Commission (“SEC”) under the Public
109 Utility Holding Company Act (“PUHCA”) before it could complete the

110 acquisition. The SEC generally requires that corporate, technical and
111 administrative services within a registered holding company system be
112 centralized and provided by a service company. Ameren Services provides such
113 services.

114 **Q. Did Ameren's application to the SEC address the S&F Agreement?**

115 A. Yes. Ameren advised the SEC that CILCO would provide corporate services
116 only for a short time period, and that after a transition Ameren Services would do
117 so. Ameren also advised that technical services would still be provided by
118 CILCO and CIGI on a permanent basis under the S&F Agreement at issue. The
119 SEC addressed these points as follows in its order approving the acquisition:

120 Applicants expect that Ameren Services will assume the
121 responsibility for providing administrative, management and
122 technical services at cost after the proposed transactions close
123 under new service agreements. There may be a period,
124 however, not to exceed two years, during the transition in
125 which CILCO will continue to provide certain corporate
126 support services, such as accounting, tax, cash management
127 and billing and sales services, to the same associate
128 companies to which these services were provided prior to the
129 proposed transaction. In addition, following the transfer of its
130 generating assets to CIGI, CILCO and CIGI request
131 authorization to provide to each other, on a permanent basis,
132 certain technical services relating to the operation and
133 maintenance of generating assets located at CILCO
134 substations and the equipment connecting CIGI's generation
135 facilities with CILCO's transmission facilities. Applicants
136 state that all of these services will be performed at cost in
137 accordance with rules 90 and 91 under a services and
138 facilities agreement to be executed when the generating assets
139 are transferred to CIGI.

140
141 (SEC Order Release No. 35-27645; 70-10078, pg. 11, January 29, 2003)

142

143 **Q. Did Ameren change the names of CILCO and CIGI?**

144 A. Yes. CILCO proceeded to do business as AmerenCILCO. Also, Ameren
145 renamed CIGI as AmerenEnergy Resources Generating Company (“AERG”).

146 **Q. You indicated that the ICC approved the transfer of CILCO’s generating**
147 **units to CIGI in April of 2002. When did the transfer of the AmerenCILCO**
148 **generating units to AERG occur?**

149 A. The transfer occurred on October 3, 2003.

150 **Q. Why was there a delay in the transfer of the CILCO generating units?**

151 A. Ameren was concerned about the proposed terms of the transfer as it had been
152 structured by AES. As a result, Ameren asked that AES delay the transfer until
153 after Ameren had completed its acquisition of CILCORP. AES agreed to do so.
154 Once Ameren had completed its acquisition, it proceeded to review the proposed
155 terms of the generating unit transfer to determine what if any changes were
156 warranted.

157 **Q. Did AmerenCILCO make any filings with the ICC to revise the proposed**
158 **terms of the transfer of its generating units?**

159 A. Yes. On July 17, 2003, AmerenCILCO filed a Notice of Amended Transfer of
160 Assets (“Notice of Amended Transfer”) pursuant to Section 16-111(g) of the
161 Illinois Public Utilities Act. The purpose was to propose changes to the
162 Contribution Agreement to effectuate a more rational allocation of liabilities

163 arising due to conditions or events occurring when the plants were owned by
164 CILCO. In all respects other than the revised Contribution Agreement, there
165 were no material changes that AmerenCILCO proposed. (Transmittal letter of
166 July 17, 2003, p. 1)

167 **Q. Did AmerenCILCO's Notice of Amended Transfer discuss changes that it**
168 **contemplated concerning the S&F Agreement?**

169 A. Yes. The following is the description that AmerenCILCO gave to the ICC on
170 July 17, 2003 when it submitted its Notice of Amended Transfer:

171 It is anticipated that corporate support services will be
172 provided under this agreement for only a brief period, and
173 that in the near future all such services will be provided
174 pursuant to the General Services Agreement ("GSA")
175 whereby Ameren Services Company provides services to
176 various Client Companies. The GSA had been previously
177 approved by the Commission in Docket No. 95-0551.
178 Pursuant to the Commission's Order in Docket No. 02-0428,
179 the GSA will be amended to include CILCO. An Application
180 to include CILCO as a Client Company has been filed with
181 the Commission in Docket No. 03-0279, and the proposed
182 amended GSA to include CILCO as a Client Company has
183 been filed in that docket. (p. 8)

184
185 **Q. What was the ICC's response to AmerenCILCO's Notice of Amended**
186 **Transfer?**

187 A. The ICC did not take any action, nor was any action required. As provided for in
188 Section 16-111(g), AmerenCILCO waited until the 30 day notice period had
189 ended and then proceeded to complete the transfer.

190 **Q. When did AmerenCILCO complete the transfer of its generating units to**
191 **AERG?**

192 A. AmerenCILCO completed the transfer on October 3, 2003.

193 **Q. Did AmerenCILCO make any filings with the ICC after it completed the**
194 **transfer?**

195 A. Yes. As referenced above, AmerenCILCO filed with the ICC on October 10,
196 2003 a transmittal letter with copies of the key documents that effectuated the
197 transfer of the generating units to AERG. Per the ICC's Order of April 2002
198 AmerenCILCO also provided a copy to the Manager of Accounting. In the
199 transmittal letter, AmerenCILCO described the changes it had made to the
200 Contribution Agreement and also to the S&F Agreement, as referenced in the
201 July Notice of Amended Transfer. The Company indicated that it was providing
202 a blacklined version of the S&F Agreement showing the changes. In particular,
203 the transmittal letter at page 2 indicated that changes were made for the following
204 reasons:

205 1) to reflect Ameren's acquisition of CILCORP; 2) to reflect
206 the regulatory approvals related to the acquisition; 3) to
207 reflect the above referenced changes made to the Contribution
208 Agreement; and 4) to otherwise conform to provisions of
209 applicable law and ICC orders (including the Public Utilities
210 Act, the Public Utility Holding Company Act, and ICC
211 Docket Nos. 02-0140 & 02-0153 (consol.).
212

213 **Q. What is the current scope of the S&F Agreement?**

214 A. The only services being provided under this agreement are the technical services that are
215 being provided by AmerenCILCO and AERG. As Ameren had previously advised the
216 SEC and the ICC, it was intended that Ameren Services would after the transition
217 provide the corporate and administrative services to CILCORP and its subsidiaries,
218 including AmerenCILCO. This in fact occurred, and so no corporate and administrative
219 services are being provided under the S&F Agreement.

220 **IV. EXPLANATION OF CHANGES THAT AMERENCILCO MADE TO**
221 **THE S&F AGREEMENT**

222 **Q. What is the purpose of this section of your testimony?**

223 A. As requested by the Staff, I will discuss the changes that AmerenCILCO made to the
224 S&F Agreement as set forth in the blacklined version filed with the ICC on October 10,
225 2003. As I explained above, some of these changes were eliminated with the most
226 current version in response to Staff's concerns.

227 **Q. Please explain the changes made to the cover page of the Agreement and the**
228 **changes in the first paragraph of Page 1 of the Agreement.**

229 A. The October 3, 2003 date is the date that the S&F Agreement was executed, which was
230 the date of the closing of the transfer of the generating units. (Per the corrected version,
231 the date now is June 29, 2004.) Also, the following changes occurred involving the
232 parties: AES was eliminated as a party; CILCORP Inc. was added to the cover page and
233 to page 1 to clarify that it was the parent of the subsidiaries to the Agreement (and not
234 AES); and Central Illinois Light Company's name was amended to reflect that it was

235 doing business as AmerenCILCO. These changes remain with the June 29, 2004
236 corrected version.

237 **Q. Please explain the addition of the four “Whereas” clauses prior to Article I.**

238 A. These clauses were added to explain the background to the changes in corporate
239 ownership. As previously discussed, the original agreement was drafted and filed before
240 Ameren had acquired CILCORP and its subsidiaries. The fourth “Whereas” clause
241 mentions changes that were made to the S&F Agreement to reflect the changes made to
242 the Contribution Agreement between AmerenCILCO and its subsidiary AERG. I
243 previously set forth these changes in discussing the Company’s October 10, 2003
244 transmittal letter. These changes remain in the June 29, 2004 version. Notably, none of
245 these changes affect the terms and conditions of the agreement.

246 **Q. Please explain why the Tax Sharing Agreement definition along with Section 2.5**
247 **titled “Tax Sharing”, and Section 7.3 titled “Tax Sharing Agreement” were deleted**
248 **from the Agreement.**

249 A. Ameren has a separate Tax Sharing Agreement which made AES’ Tax Sharing
250 Agreement language obsolete. These changes remain in the June 29, 2004 version.

251 **Q. Please explain the changes in Section 1.2.**

252 A. The changes in Section 1.2 (a) were made to clarify the purpose and intent of the S&F
253 Agreement. Section 1.2 was the focus of the Staff Report, which was the basis for the
254 ICC initiating this docket. The original language of Section 1.2 stated that the S&F
255 Agreement was “not intended to govern transactions between AES Entities, although

256 such entities may elect to apply the provisions of this Agreement to specific
257 transactions”. In response, AmerenCILCO modified this to clarify that the agreement
258 would apply as to transactions between CILCORP and AmerenCILCO, as described in
259 ICC Docket Nos. 02-0140 & 02-0153 (consolidated) and as represented by Ameren in its
260 SEC filings. As discussed above, AmerenCILCO and AERG were to provide to each
261 other on a permanent basis technical services involving the other’s electrical equipment.
262 As a result, AmerenCILCO believed it necessary to clarify that the S&F Agreement
263 would apply to AmerenCILCO and AERG. With the benefit of hindsight, it would have
264 been simpler to leave the original language intact and simply rely on the language
265 allowing AmerenCILCO and AERG to “elect to apply the provisions of this Agreement
266 to specific transactions”.

267 The October 10, 2003 version of Section 1.2 (b) was also amended to point out that the
268 S&F Agreement would be superseded in part by the General Services Agreement
269 (“GSA”) approved by the ICC in Docket No. 03-0279 per the Order dated September 30,
270 2003. As previously discussed, to comply with SEC requirements under PUHCA
271 Ameren Services after a transition would provide corporate and administrative services
272 to CILCORP and its subsidiaries. Ameren Services would do so under the GSA which
273 the ICC approved in the above referenced docket. As discussed above, we addressed
274 this in the July 17, 2003 Notice of Amended Transfer.

275 In response to Staff’s concerns, for the S & F Agreement now in effect, Section 1.2 was
276 changed back to the original version except for the name changes.

277 **Q. Please explain why Section 3.4 “AES Stock” was deleted.**

278 A. This Section was obsolete due to the changes in corporate ownership of CILCORP by
279 Ameren. This deletion is reflected in the June 29, 2004 version.

280 **Q. Please explain the addition of Section 3.5.**

281 A. This Section was added to clarify that a sale or transfer of AmerenCILCO’s assets under
282 the agreement could be made in accordance with Article XVI of the Act. This section
283 remains in the current version and in my view is accurate as a matter of law, especially
284 since Section 1.2 provides that transactions under the S&F Agreement are optional.

285 **Q. Please explain why certain of the language in the original Section 4.3(d) was
286 deleted.**

287 A. Ameren has a separate Tax Sharing Agreement which made CILCO’s Tax Sharing
288 Agreement language obsolete.

289 **Q. Please explain the changes to the original Section 4.3(e) and (f)**

290 A. These are formatting changes only which involved renaming these subsections. When
291 deleting the reference to the “tax sharing arrangement” in Section 4.3 (d), I then took the
292 operative language from then Section 4.3 (e) and made it part of Section 4.3 (d). I did
293 the same for Section 4.3 (f), making its operative language part of Section 4.3(e). These
294 changes remain in the current June 29, 2004 version.

295 **Q. Please explain why Section 4.3(g) was deleted.**

296 A. This Section was obsolete due to the changes in corporate ownership of CILCO, and is
297 omitted in the current version of the S & F Agreement.

298 **Q. Please explain the changes to Section 5.1.**

299 A. This language (“governed by this Agreement, and not pursuant to Article XVI of the
300 Act”) was added to clarify that AmerenCILCO does have authority to perform
301 transactions in accordance with Article XVI of the Act. This language remains in the
302 June 29, 2004, version. As discussed above, I believe this is consistent with the statute
303 and otherwise reasonable.

304 **Q. Please explain the addition of “or at a later date as mutually agreed to by the
305 Parties hereto” to Section 7.1.**

306 A. The section provided that the agreement would be in effect within 60 days of approval
307 by the ICC, “or at a date later as mutually agreed to by the Parties hereto”. Obviously,
308 since Ameren did not acquire CILCORP until January of 2003, it could not have the
309 S&F Agreement take effect within 60 days after approval by the ICC in April of 2002,
310 and thus could not comply with this section as originally drafted. The intent was to
311 afford the parties flexibility as to when the agreement would be in effect, if for some
312 reason it could not go into effect within 60 days of its approval as the language originally
313 required. The current version simply states the S & F Agreement took effect on October
314 3, 2003, the date of its earlier execution.

315 **Q. Please explain the changes to Exhibit A.**

316 A. Again, the changes regarding AES, CILCORP and d.b.a. AmerenCILCO are due to
317 changes in corporate ownership and the renaming of some of the entities by Ameren.
318 These changes remain in the June 29, 2004 S&F Agreement

319 **V. CONCLUSION**

320 **Q. Please summarize your testimony.**

321 A. I have explained the changes that AmerenCILCO made to the Services and Facilities
322 Agreement in October of 2003 to reflect the acquisition of CILCO by Ameren and to
323 reflect the fact that CILCO and AERG were now part of the Ameren holding company
324 system and would be receiving corporate and administrative services from Ameren
325 Services. In my view, the changes that AmerenCILCO made were all minor and did not
326 exceed the parameters of the agreement as approved by the ICC in Docket No. 02-0140
327 & 02-0153. The ICC specifically required that the agreement filed contain substantially
328 the same terms as its predecessor. In this respect, the October 2003 and June 2004
329 versions do not change any of the material obligations of the parties to those agreements.
330 It was certainly not our intent to make any substantive changes. Instead, the changes
331 were designed to clarify the scope of the agreement particularly in light of the fact that
332 Ameren was acquiring AmerenCILCO and AERG and inheriting an agreement
333 involving those two entities which had to mesh with existing agreements involving
334 Ameren and its subsidiaries. With the benefit of hindsight, it would have been better,
335 although in my view incorrect, to leave the S&F Agreement intact to avoid any question
336 by the Staff.

337 **Q. Does this conclude your direct testimony?**

338 A. Yes, it does.